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HOUSE BILL 281

46TH LEGISLATURE - STATE OF NEW MEXICO - FIRST SESSION, 2003

INTRODUCED BY

Raymond M. Ruiz

AN ACT

RELATING TO INSURANCE; PROVIDING FOR REGULATION OF CONTROLLED
INSURANCE PLANS; AMENDING THE WORKERS' COMPENSATION ACT;
PROVIDING A PENALTY.

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF NEW MEXICO:

Section 1. Section 52-1-1.1 NMSA 1978 (being Laws 1986,
Chapter 22, Section 26, as amended) is amended to read:

"52-1-1.1. DEFINITIONS. -- As used in Chapter 52, Articles
1 through 6 NMSA 1978:

A. "controlled insurance plan" means a plan of
insurance coverage that is:

(1) for a fixed term of coverage;

(2) for a single construction project.

including all related activities on the construction site and
travel to and from the construction site;

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1 (3) established and administered by either the
2 owner or the principal contractor of a construction project;

3 and

4 (4) coverage for the employees of the
5 contractors and subcontractors who are engaged in a
6 construction project;

7 [~~A.-~~] B. "director" means the director of the
8 workers' compensation administration;

9 [~~B.-~~] C. "division" means the workers' compensation
10 administration;

11 [~~C.-~~] D. "workers' compensation judge" means an
12 individual appointed by the director to act as a workers'
13 compensation judge in the administration of the Workers'
14 Compensation Act or the New Mexico Occupational Disease
15 Disabling Law;

16 [~~D.-~~] E. "workman" or "workmen" means worker or
17 workers;

18 [~~E.-~~] F. "Workmen's Compensation Act" means the
19 Workers' Compensation Act; and

20 [~~F.-~~] G. "workmen's compensation administration" or
21 "administration" means the workers' compensation administration
22 administratively attached to the labor department. "

23 Section 2. A new section of the Workers' Compensation Act
24 is enacted to read:

25 "[NEW MATERIAL] CONTROLLED INSURANCE PLAN--PENALTY.--

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1 A. An owner or the principal contractor of a
2 construction project may establish and administer a controlled
3 insurance plan for a construction project that has an estimated
4 cost equal to or greater than three hundred million dollars
5 (\$300,000,000). As used in this section, "estimated cost"
6 includes design, utilities, site excavation, construction costs
7 of improvements to real property and acquisition of equipment
8 and furnishings but does not include the cost of fees or
9 charges associated with financing the construction project.

10 B. The owner shall include in requests for
11 proposals for bids a notice that participation in a controlled
12 insurance plan is a condition of the bid and shall provide a
13 copy of the terms and conditions of the controlled insurance
14 plan. The terms and conditions shall include a statement of
15 contractor's or subcontractor's duty regarding costs.

16 C. The owner shall not extend a controlled
17 insurance plan beyond a single construction site or term of the
18 construction project. A controlled insurance plan shall be
19 job-specific.

20 D. A contractor or subcontractor may retain
21 separate insurance coverage without consequence if the net rate
22 is lower than the composite rate under the controlled insurance
23 plan. The controlled insurance plan shall:

24 (1) cover the entire job, including activities
25 at the site of the construction project and transportation of

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1 materials to and from the site of the project; and

2 (2) provide for resolving disputed issues,
3 including repayment of the responsible party, by resolution
4 before the worker's compensation administration.

5 E. An owner or principal contractor who enters into
6 a contract for a controlled insurance plan shall file a copy of
7 the contract with the insurance division of the public
8 regulation commission at least thirty days before the date on
9 which the bid advertisement is scheduled to begin. The terms
10 and conditions shall include a statement of contractor's or
11 subcontractor's duty regarding costs. The insurance division
12 shall review and approve or reject the contract within thirty
13 days after receiving a copy of a contract. If the insurance
14 division does not reject the contract within thirty days after
15 receiving it, the contract shall be deemed approved.

16 F. An excess premium from a retrospectively rated
17 or dividend policy from the controlled insurance plan shall be
18 returned on a proportional basis to each contractor and
19 subcontractor who participated in the controlled insurance
20 plan.

21 G. An owner or principal contractor shall provide
22 for the safety of an employee engaged in the construction
23 project when the employee works at the site of the construction
24 project. The owner or principal contractor of the construction
25 project shall develop and carry out a health and safety program

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1 approved by the insurance division of the public regulation
2 commission. The plan shall include a protocol that encourages
3 return to work guidelines pursuant to the Workers' Compensation
4 Act.

5 H. The owner or principal contractor of a
6 construction project that uses a controlled insurance plan
7 shall:

8 (1) provide a contractor or subcontractor the
9 same information on an employee's work-related injury under the
10 controlled insurance plan as is required under the contractor's
11 or subcontractor's other insurance coverage;

12 (2) provide experienced units statistical
13 rating information and any other statistical information
14 required by the insurance division of the public regulation
15 commission for all contractors and subcontractors, including
16 losses and payroll, to the appropriate rating service within
17 thirty days of a policy period for a controlled insurance plan;
18 and

19 (3) provide a contractor or subcontractor with
20 the same rights of payroll audit access and access to
21 information on injured employees in the same manner as
22 employees of a non-controlled insurance plan project.

23 I. In addition to any other penalties provided
24 under the law, a person found to have violated any requirement
25 of this section shall be subject to a fine of not less than

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1 five thousand dollars (\$5,000) and not more than ten thousand
2 dollars (\$10,000) for each occurrence. "

3 Section 3. Section 59A-2-8 NMSA 1978 (being Laws 1984,
4 Chapter 127, Section 26) is amended to read:

5 "59A-2-8. GENERAL POWERS, DUTIES OF SUPERINTENDENT. -- The
6 superintendent shall:

7 A. organize and manage the insurance [~~department~~]
8 division and direct and supervise all its activities;

9 B. execute the duties imposed upon him by the
10 Insurance Code;

11 C. enforce those provisions of the Insurance Code
12 [~~which~~] that are administered by him;

13 D. have the powers and authority expressly
14 conferred by or reasonably implied from the provisions of the
15 Insurance Code;

16 E. conduct such examinations and investigations of
17 insurance matters, in addition to those expressly authorized,
18 as he may deem proper upon reasonable and probable cause to
19 determine whether any person has violated any provision of the
20 Insurance Code or to secure information useful in the lawful
21 enforcement or administration of any such provision; [~~and~~]

22 F. have such additional powers and duties as may be
23 provided by other laws of this state; and

24 G. adopt rules for approval and establishment of
25 controlled insurance plans, including performance standards

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compliance enforcement. "

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